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EXAMINER

WILKENS, JANET MARIE

ART UNIT

PAPER NUMBER

3637

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Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/841,402
Filing Date: April 23, 2001
Appellant(s): KLUSER ET AL.

MA" FD

APR 21 2005

GROUP 3600

Francis I Gray
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed February 4, 2005.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct. However, it should be noted that the rejection to claim 5 is being withdrawn; this claim is now objected to. The prior art, i.e. Rodriguez in view of Noda, fails to teach the securing means on the central rib.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Claimed Subject Matter*

The summary of invention contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the issues in the brief is correct.

(7) Argument

The appellant's format of the arguments in the brief is correct.

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

5,138,525	RODRIGUEZ	08-1992
4,688,131	NODA et al	08-1987
5,587,877	RYAN et al	12-1996
6,109,329	RUSSO	08-2000

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Rodriguez. Rodriguez teaches a rack-mounting system (Fig. 2) comprising: a frame (top, bottom and side walls of 20) forming a central compartment (entire inside of housing 20) and including a central rib/wall (15), a sleeve (a; see Attachment A) adapted to received an instrument and fit into the compartment (conceivably anywhere inside the frame; see

revised Attachment A) and means for detachably securing the sleeve within the frame (b,c; see attachment A).

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rodriguez. As stated above, Rodriguez teaches the limitations of claim 1, including a central rib/wall within the frame. For claim 4, Rodriguez fails to teach that the compartments formed by the rib/wall are equal in size. It would have been an obvious design consideration to one of ordinary skill in the art at the time of the invention to modify the system of Rodriguez by locating the rib/wall so that the compartments are equal in size, depending on the desired need/use of the frame, e.g. depending on what is to be located/stored in each compartment.

Claims 2 and 4/8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rodriguez in view of Noda et al and Ryan et al. As stated above, Rodriguez teaches the limitations of claims 1 and 4, including a sleeve detachably secured in a frame. For claims 2 and 8, Rodriguez fails to teach that the securing means is specifically a spring and button member. Noda teaches a rack-mounting system (Fig. 2) comprising: a frame (24), a sleeve (22) fit into the compartment and means for detachably securing the sleeve within the frame (see Fig. 8). The securing means comprising a spring (88) mounted on the frame and a button (94) mounted on the spring and extending through holes in the frame and sleeve. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system of Rodriguez by using an alternate type of securing means between its sleeve and frame, i.e. using the spring and button means of Noda therein instead of the generic means

presently disclosed, since these means are functional equivalents and it appears that either type of means would work equally well between the sleeve and frame of Rodriguez. Furthermore, assuming that the base of the frame of Rodriguez is flush with a support surface, a "fake bottom" such as is taught by Ryan et al at 16 could be employed to allow the spring to flex. Also when the components 25 are removed from the sleeve, the buttons can be depressed from there within.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rodriguez in view of Russo. As stated above, Rodriguez teaches the limitations of claim 1, including a sleeve detachably secured in a frame. For claim 3, Rodriguez fails to teach that the sleeve is made of two members, having mating fingers. Russo teaches members (14) attached together via mating fingers. First, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system of Rodriguez by making the sleeve plural pieces, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179. Furthermore, it would have been obvious to connect the pieces using mating fingers, such as is taught by Russo, since this type of attachment is well known and would work well connecting the halves together.

(11) Response to Argument

Applicant's arguments filed February 4, 2005 have been fully considered but they are not persuasive.

The applicant argues that Rodriguez's housing is not a rack mounted frame with a central compartment/divided compartments having a sleeve located therein/attached thereto. The examiner disagrees. The housing walls of Rodriguez, including the top, bottom and side walls thereof, do form a frame; a frame that is capable of being stored in an instrument rack. Please note that no system/rack interconnection is being claimed; therefore, the fact that the housing of Rodriguez can be placed in an instrument rack satisfies this limitation.

Furthermore, it is argued that the strut of Rodriguez cannot be considered a rib. The examiner again disagrees. By definition, a strut can be considered a rib (strut: a supporting bar or rod and rib: a part or piece similar to a rib and serving to shape or support. *Second College Edition of the American Heritage Dictionary*; Note: applicant's definition is confusing/not applicable).

It is also argued that the rib/strut of Rodriguez does not have compartments on either side (compartment: one of the parts or spaces into which an area is subdivided; *Second College Edition of the American Heritage Dictionary*). The fact that the strut does not "close off" one compartment from the other does not preclude the spaces between the rib (and/or side walls) from forming compartments there between (i.e. the strut forms a partial wall).

As for the attachment of the sleeve, although not specifically discussed, the type of slot/projection attachment shown in Fig. 2 of Rodriguez is well known in the art (and most likely why not specifically discussed). The statement that this sleeve is permanently affixed is merely an assumption on the part of the applicant. It is just as

plausible that the slot/projection attachments of Rodriguez are "removably connected" for repair, replacement, etc. Furthermore, it should be noted that everything is detachable, if only via force, and that applies to the sleeve/frame of Rodriguez. As for the "timing" of the insertion of the sleeve, no limitation is directed to such a feature and it should be noted that the claims are article claims (not method claims). The claims only state that a sleeve is inserted and fitted within the central compartment. Rodriguez's sleeve/frame arrangement fulfills this limitation.

Addressing the argument concerning the alternate attachment means provided by Noda between the sleeve and frame of Rodriguez: as stated above, using the specific spring and button means (only) of Noda therein instead of the generic means presently disclosed, would simply be substituting one functionally equivalent means for another; either type of means working equally well between the sleeve and frame of Rodriguez.

Applicant's arguments concerning claim 5 have been found persuasive.

Art Unit: 3637

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Wilkins
March 28, 2005

Conferees

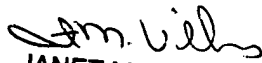
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